

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SUE M. SHURTLEFF,

Plaintiff,

v.

OLIVE GARDEN,

Defendant.

C.A. No. 14-10920-LTS

ORDER

SOROKIN, J.

1. The motion for leave to proceed in forma pauperis (#2) is GRANTED.

2. The Clerk shall issue summons. The plaintiff is responsible for completing service in accordance with Rule 4 of the Federal Rules of Civil Procedure. If the plaintiff elects to have service completed by the United States Marshals Service, the United States Marshals Service shall serve a copy of the summons, complaint, and this order upon the defendant as directed by plaintiff with all costs of service to be advanced by the United States. Service must be completed within 120 days of the date of this order.

3. The motion for appointment of counsel (#4) is DENIED WITHOUT PREJUDICE.

Although the Court “may request an attorney to represent any person unable to afford counsel,” 28 U.S.C. §1915(e)(1), a civil plaintiff lacks a constitutional right to free counsel, see DesRosiers v. Moran, 949 F.2d 15, 23 (1st Cir. 1991). The Court does not have the funds to pay attorneys to represent plaintiffs in civil cases, and it is very difficult for the Court to find attorneys who will accept appointment as pro bono counsel. To qualify for this scarce resource, a party must be indigent and exceptional circumstances must exist such that the denial of counsel will result in fundamental unfairness impinging on the party’s due process rights. See DesRosiers, 949 F.2d at 23. To determine whether there are exceptional circumstances sufficient to warrant the appointment of counsel, a court must examine the total situation, focusing on the merits of the case, the complexity of the legal issues, and the litigant’s ability to represent himself. See id. at 24.

Because the defendant has not been served with or responded to the complaint, the Court cannot determine whether exceptional circumstances exist that would justify appointment of counsel. The plaintiff may renew this motion after the defendant has responded to the complaint. If the plaintiff files a renewed motion for appointment of counsel, she must include therein a description of efforts she has made to find counsel.

SO ORDERED.

/s/ Leo T. Sorokin
UNITED STATES DISTRICT JUDGE

Date: 9/30/2014